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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,693	09/08/2003	Roy Higgs		1258

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Patent Office of J. John Shimazaki
P.O. Box 650741
Sterling, VA 20165

EXAMINER

BOVEJA, NAMRATA

ART UNIT	PAPER NUMBER
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3622

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06/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/657,693	Applicant(s) HIGGS, ROY	
	Examiner Namrata Boveja	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09/08/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to communication filed on 09/08/2003.
2. Claims 1-19 are presented for examination.
3. The second paragraph of 35 U.S.C. 112 is directed to requirements for the claims:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

There are two separate requirements set forth in this paragraph:

(A) the claims must set forth the subject matter that applicants regard as their invention; and

(B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, since the recitation, "wherein said activity is designed to provide entertainment and/or activities relating to said particular goods and/or services" renders the claim indefinite, because it is unclear what the Applicant means by this statement. Specifically, it is unclear what is meant by an activity that is designed to provide an activity. It is interpreted to mean that the activity is designed to bring customers to the stores to promote the sales of the stores. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 6, 8, 10, 13, 15, and 19 are rejected under 102(b) as being anticipated by the article titled, "Promotional Ties to Charitable Causes Help Stores Lure Customers," by Ann Zimmerman published in the Wall Street Journal on December 2, 2000 on pg. B.1 (hereinafter Zimmerman).

In reference to claims 1 and 8, Zimmerman teaches the method of promoting sales of goods and/or services by pre-selected retail merchants within a shopping mall, comprising: providing a microenvironment within said shopping mall having a theme associated with the goods and/or services sold by at least two of said retail merchants (i.e. holiday charity theme or a back to school shopping theme) (page 2 paragraphs 2, 3, and 8); locating said at least two of said retail merchants on the property of said shopping mall in or adjacent said microenvironment (i.e. 20 blocks of Madison Avenue in New York including stores such as Armani and Zitomer) (page 2 paragraph 3); and providing at least one activity within said micro-environment having a theme (i.e. providing the activity of contributing 20% of total sales to charity by the malls and providing the activity of contributing \$50 by consumers to charity for purchase of the 20% discount card) designed to help promote the particular goods and/or services offered for sale by said at least two of said retail merchants (this is an intended use and is not given weight) (page 1 paragraph 2 and page 2 paragraphs 2, 3, 8, and 10), wherein said activity is designed to provide entertainment and/or activities relating to said particular goods and/or services, and to attract customers to said at least two of said retail merchants (this is an intended use and is not given weight) (page 1 paragraph 2 and page 2 paragraphs 2, 3, 8, and 10).

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5. In reference to claims 3 and 10, Zimmerman teaches the method, wherein said microenvironment is located in a common area within an indoor and/or outdoor area of said shopping mall (page 2 paragraph 3).

6. In reference to claim 15, Zimmerman teaches a method of attracting retail merchants to occupy space at a shopping mall or commercial complex, comprising: developing or having developed said shopping mall or complex having a plurality of retail spaces for establishments to lease (i.e. retail spaces along 20 blocks of Madison Avenue in New York) (page 2 paragraph 3 and page 3 paragraph 9); developing or having developed a micro-environment within a common area of said shopping mall or complex (i.e. retailers such as Armani and Zitomer are located within the common area) (page 2 paragraph 3); developing or having developed a theme (i.e. holiday charity theme or a back to school shopping theme) (page 2 paragraphs 2, 3, and 8) and at least one activity for said microenvironment related to said theme (i.e. providing the activity of contributing 20% of total sales to charity by the malls and providing the activity of contributing \$50 by consumers to charity for purchase of the 20% discount card); arranging for the location and operation of at least one retail establishment in or adjacent said micro-environment within said shopping mall or complex, wherein said at least one retail establishment can offer particular goods and/or services associated with said theme (page 2 paragraph 11 and page 3 paragraphs 8 and 9); and arranging for the operation of said at least one activity in said microenvironment in a manner that serves to promote said particular goods or services offered for sale by said at least one

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retail establishment (page 1 paragraph 2, page 2 paragraph 10, and page 3 paragraph 5).

7. In reference to claims 6, 13, and 19, Zimmerman teaches the method wherein said at least one activity within said microenvironment is altered during the year to emphasize themes associated with seasonal activities (i.e. charity event held near Christmas time or back to school event held in the Fall) (page 2 paragraphs 8, 9, and 11 and page 3 paragraph 9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 4, 7, 9, 11, 14, and 16 are rejected under U.S.C. 103(a) as being unpatentable over Zimmerman in view of the article titled, "Retailers gear up for big party: Businesses try quirky promotions during convention," by The Associated Press, published in the Charleston Daily Mail on July 29, 2000 on pg. 3.A (hereinafter TAP).

In reference to claims 2, 9, and 16, Zimmerman does not teach the method wherein said at least one activity enables said particular goods or services offered by at least one of said at least two retail merchants to be tried or tested by consumers. TAP teaches the method wherein said at least one activity enables said particular goods or services offered by at least one of said at least two retail merchants to be tried or tested

by consumers (i.e. cookies, pies, jelly beans, and martinis) (page 1 paragraphs 1, 4, and 5, page 2 paragraphs 4-10). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Zimmerman to include the method wherein said at least one activity enables said particular goods or services offered by at least one of said at least two retail merchants to be tried or tested by consumers, since this would give the user an opportunity to sample the product before purchasing it and would encourage the user to try out new products without the risk of having to come back to return the product if the user doesn't like the item.

9. In reference to claims 4 and 11, Zimmerman does not specifically teach the method wherein said theme relates to an activity taken from the group consisting of the following: a) sports and other outdoor activities, wherein said at least two of said retail establishments comprises at least one store that sells and/or rents goods relating to said sports and other outdoor activities; b) fashion design and make-up activities, wherein said at least two of said retail establishments comprises at least one store that sells goods relating to said fashion design and make-up activities; c) concerts and musical activities, wherein said at least two of said retail establishments comprises at least one store that sells goods relating to said concerts and musical activities; d) cooking and tasting displays, wherein said at least two of said retail establishments comprises at least one store that sells goods relating to said cooking and tasting display activities. TAP teaches the method wherein said theme relates to cooking and tasting displays, wherein said at least two of said retail establishments comprises at least one store that sells goods relating to said cooking and tasting display activities (page 1

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paragraphs 1, 2, 4, and 5 and page 2 paragraphs 4-10). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Zimmerman to include the method wherein said theme relates to cooking and tasting displays, wherein said at least two of said retail establishments comprises at least one store that sells goods relating to said cooking and tasting display activities, since this would give the user who are interested in exploring cooking and tasting products during a shopping trip an opportunity to sample the products before purchasing them and would encourage the user to try out new products without the risk of having to come back to return the products if the user doesn't end up liking the products.

10. In reference to claims 7 and 14, Zimmerman does not teach the method wherein said at least one activity comprises one or more activity taken from the group consisting of the following: a rock climbing wall, a putting green, a golf driving range or net, a wave pool, a wave machine, a skate park, an off-road vehicle course, a simulated skiing machine, a simulated surf machine, a swim exercise pool, an underwater diving tank, an ice skating rink, a basketball court, an exhibition hall, a theater showing specific themed movies, a ride tailored to related subjects, fashion design and make-up activities, concerts or musical activities, and cooking and tasting activities and displays.

TAP teaches the method wherein said theme relates to cooking and tasting displays (page 1 paragraphs 1, 2, 4, and 5 and page 2 paragraphs 4-10). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Zimmerman to include the method wherein said theme relates to cooking and tasting displays, since this would give the user who are interested in

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exploring cooking and tasting products during a shopping trip an opportunity to sample the products before purchasing them and would encourage the user to try out new products without the risk of having to come back to return the products if the user doesn't end up liking the products.

11. Claims 5, 12, 17, and 18 are rejected under U.S.C. 103(a) as being unpatentable over Zimmerman in view of Official Notice.

In reference to claims 5, 12, and 18, Zimmerman the method, wherein said at least one activity is independently operated by a separate business (i.e. by The Family Place, the Children's Aid Society, Colorado's Children Campaign, and the Jewish Children's Bureau) (page 1 paragraph 2, page 2 paragraphs 3 and 8-11, and page 3 paragraphs 2, 3, 5, and 9). Zimmerman does not specifically teach the separate business operating the activity independently to be operated within said shopping mall. Official Notice is taken that it is old and well known to have separate businesses operate independently in a mall, as done by Hotels for example that are located inside the mall for the convenience of guests. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in Zimmerman's method the location and operation of the separate businesses within the premises of a mall for the convenience of the shoppers and the stores in submitting receipts for the purposes of tabulating the amount of donations to be made to charity without requiring the customers and the retailers to go outside the mall premises to participate in charitable activities.

12. In reference to claim 17, Zimmerman does not specifically teach the method

wherein more than one microenvironment is developed within said shopping mall or complex. Official Notice is taken that it is old and well known for malls to develop more than one micro-environment as done by locating retail stores in one area and having a food court area with all the restaurants in another area of the mall. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in Zimmerman's method more than one micro-environment for the convenience of the shoppers so that those shoppers who are only at the mall for eating can go to the food court area versus without having to travel through the retail store areas and thereby saving the shoppers travel time.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The **FAX number** for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).

NB

NB

June 23rd, 2007

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